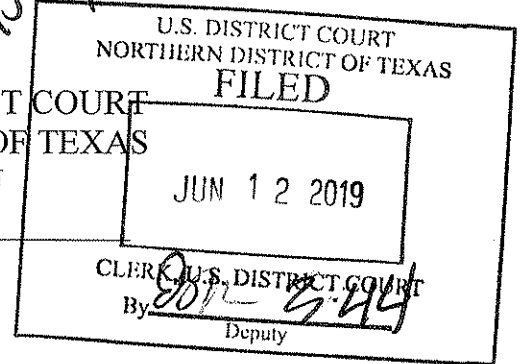


ORIGINAL
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



LISA BIRON,

Plaintiff,

v.

Civil Action No. 4:19-CV-322-A

FEDERAL MEDICAL CENTER ("FMC")
CARSWELL WARDEN JODY UPTON;
FMC CARSWELL PSYCHOLOGIST
LETICIA A. ARMSTRONG; FMC
CARSWELL PSYCHOLOGIST E. DIXON,

Defendants.

**DEFENDANTS' MOTION TO MODIFY DEADLINE
FOR SUMMARY-JUDGMENT MOTIONS**

In this action, federal prisoner Lisa Biron is asserting *Bivens*¹ claims and claims for declaratory and injunctive relief against various prison officials. The defendants now request that the Court modify the deadline for any summary-judgment motion so that any such motion is not due until 30 days after the Court has ruled on the defendants' pending motion to dismiss Biron's first amended complaint, and as support would show as follows:

This case was originally filed by Biron in state court but was removed to this Court by the defendants on April 22, 2019. (Doc. 1.) That same day, the Court entered a scheduling order which established a trial date of October 28, 2019 and set assorted other

¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

pretrial deadlines. (Doc. 8.) On April 29, 2019, the defendants filed a motion to dismiss Biron's original complaint. (Doc. 11.) The defendants' deadline to respond to the original complaint in state court had not yet arrived when the case was removed, so this was the defendants' initial substantive response to the original complaint. On May 20, 2019, Biron filed a first amended complaint as a matter of course under Rule 15(a)(1).² (Doc. 15.) On June 3, 2019, the defendants filed a motion to dismiss the first amended complaint. (Doc. 17.) That motion is still pending, and under the local rules, Biron's response is due on June 24, 2019.

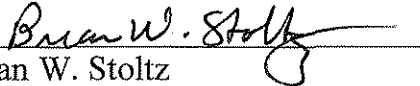
The Court's scheduling order states that any motion for summary judgment must be filed at least 120 days prior to the scheduled trial date. (Doc. 8, ¶ 2.) With the trial scheduled for October 28, 2019, (Doc. 8, ¶ 6), this yields a date of June 30, 2019. Given that Biron's response to the defendants' motion to dismiss the first amended complaint is not due until shortly before that date, on June 24, 2019, the defendants respectfully request that the deadline for any summary-judgment motion be modified. If the Court grants the motion to dismiss in full, there would not be any need for a summary-judgment motion. And if the Court denies or grants the motion to dismiss only in part, having that decision will allow for the preparation of a streamlined summary-judgment motion focused on whatever issues remain in the case. Accordingly, the defendants request that the Court modify the scheduling order such that any motion for summary judgment be

² Biron also filed a response to the defendants' motion to dismiss the original complaint, but the response was limited to the issue of whether claims for money damages should be considered available, and did not address several other grounds for dismissal urged by the defendants, such as qualified immunity, the Prison Litigation Reform Act, and a jurisdictional bar to official-capacity claims. (See Doc. 16.) In any event, all of these same defenses are at issue in the defendants' motion to dismiss the amended complaint.

filed within 30 days of the Court's ruling on the pending motion to dismiss the first amended complaint.

Respectfully submitted,

ERIN NEALY COX
United States Attorney

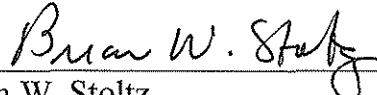


Brian W. Stoltz
Assistant United States Attorney
Texas Bar No. 24060668
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214-659-8626
Facsimile: 214-659-8807
brian.stoltz@usdoj.gov

Attorneys for Defendants

Certificate of (No) Conference

As Biron is presently incarcerated, I have not conferred with her about this motion.

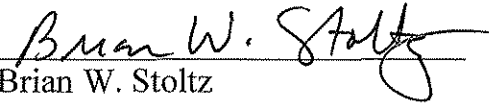


Brian W. Stoltz
Assistant United States Attorney

Certificate of Service

On June 12, 2019, I served the foregoing document (and its accompanying proposed order) on plaintiff Lisa Biron by mailing it to her by certified mail (#7018 2290 0001 4480 3799), addressed as follows:

Lisa Biron # 12775-049
FCI Waseca
P.O. Box 1731
Waseca, MN 56093



Brian W. Stoltz
Assistant United States Attorney